

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 14-0333 AG (DFMx)	Date	January 12, 2015
Title	COLLECTORS UNIVERSE, INC. v. DUANE C. BLAKE		

Present: The Honorable	ANDREW J. GUILFORD
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Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

**Proceedings: [TENTATIVE ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant Duane C. Blake ("Blake") is the inventor and owner of United States Patent No. 8,661,889 (the "'889 Patent"), issued March 4, 2014. The '889 Patent claims methods of displaying uncirculated coins. The methods include the use of a label showing that the coins have been given an above-average "eye appeal" ranking within the coin's whole number grade on the conventional Sheldon coin grading scale.

On the same day the U.S. Patent and Trademark Office ("USPTO") issued the '889 Patent, Plaintiff Collectors Universe ("CU") filed this case, seeking a declaration that the '889 Patent is invalid and that CU does not infringe it. (Compl., Dkt. No. 1 at ¶¶ 31-42.) On July 3, 2014, Blake filed Counterclaims against CU, Professional Coin Grading Service ("PCGS"), DHRCC LLC ("DHRCC"), and Expos Unlimited LLC ("Expos Unlimited") (collectively, the "Counterclaim Defendants"). (Am. Answer, Dkt. No. 14.)

Plaintiff filed a "Motion for Summary Judgment or Alternatively, Partial Summary Judgment" asserting that Claims 1, 3, and 4 of the '889 Patent are invalid due to lack of novelty. (Plaintiff's Motion, Dkt. No. 55) Blake filed a "Motion for Partial Summary Judgment as to Direct Patent Infringement Claim." (Blake's Motion, Dkt. No. 60.)

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Because the undisputed evidence shows that Claims 1, 3, and 4 restate prior art widely known in coin collecting, Plaintiff's Motion is GRANTED. As necessarily follows, Blake's Motion is DENIED.

LEGAL STANDARD

Summary judgment is appropriate where the record, read in the light most favorable to the non-moving party, shows that "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Material facts are those necessary to the proof or defense of a claim, as determined by reference to substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* In deciding a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255.

The burden initially is on the moving party to show the absence of a genuine issue of material fact or that the non-moving party will be unable to make a sufficient showing on an essential element of its case for which it bears the burden of proof. *Celotex*, 477 U.S. at 322-23. Only if the moving party meets its burden must the non-moving party produce evidence to rebut the moving party's claim. If the non-moving party establishes the presence of a genuine issue of material fact, then the motion will be denied. *Nissan Fire & Marine Ins. Co. v. Fritz Co., Inc.*, 210 F.3d 1099, 1103 (9th Cir. 2000) (citing *Celotex*, 477 U.S. at 322).

PLAINTIFF'S MOTION

Plaintiff argues in its Motion that Claims 1, 3, and 4 of the '889 Patent are invalid because they were anticipated by prior art and obvious. The Court agrees.

1. Invalidity under 35 U.S.C. § 102 and 35 U.S.C. § 103

Claims of an issued United States patent are presumed valid. 35 U.S.C. § 282. "A party seeking to establish that particular claims are invalid must overcome the presumption of validity in 35 U.S.C. § 282 by clear and convincing evidence." *State Contracting & Eng'g Corp.*

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v. Condotte Am., Inc., 346 F.3d 1057, 1067 (Fed. Cir. 2003). In conducting an invalidity analysis, each claim must be examined individually.

The '889 Patent was filed before March 16, 2013, so the pre-America Invents Act version of 35 U.S.C. § 102 and § 103 applies. Under § 102, a person shall be entitled to a patent unless the invention was “known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.” 35 U.S.C. § 102 (2002). Under § 103, a person may not obtain a patent “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103 (2002). According to these provisions, a patent may be invalidated for lack of novelty.

2. Disputed Claims

The disputed claims concern methods of displaying uncirculated coins with their conventional quality grades and additional indicators for “eye appeal.” For context, claims 1, 3, and 4 are reproduced here in full.

1. A coin value preservation and safeguard holder display method adapted to increase coin grading precision within the conventional Sheldon coin grading standard and further safeguard the condition of an uncirculated coin through the introduction and display of one or more eye appeal-related information indicators, comprising:

a) providing an uncirculated coin, said coin

i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale; and

ii) said coin having been further digitally imaged, whereby said digital coin image file is electronically stored in a database for future comparative assessment with a second digital coin image file of said coin created at a later date;

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b) including a standard clear plastic coin holder display device capable of displaying a coin label in proximity to said related uncirculated coin; and

c) introducing and displaying said coin label, said label being internally-affixed within said coin holder display device and further capable of displaying at least one eye appeal-related information indicator associated with said uncirculated coin, whereas said at least one eye appeal-related information indicator comprises a plus (“+”) symbol printed on said label defined within said display device, said + symbol adjoining the coin’s Sheldon whole number grade on said label, and further being located on said label in proximity to said coin such that the indicator is openly displayed, said indicator further correlating to a precise above-average fractional grade condition of said coin.

(‘889 Patent 15:65-16:24 (emphasis added).)

3. A method of claim 1 for displaying at least one visual indicator associated with an uncirculated coin by using a coin label situated within an appropriate holder, comprising visually including therewith, and arranged in a manner such that an eye appeal-related indicator associated with said coin comprises a QUERTY plus (+) symbol such as to indicate that said uncirculated coin’s eye appeal condition is predetermined to be of above average quality within its Sheldon scale whole number grade, and the preservation safeguard-related indicator associated with said coin comprises a colored label such as to indicate that the uncirculated coin was imaged beforehand using a conventional digital image recording device, and that the imaged coin’s digital file is stored in a computer database for future comparative purposes.

(‘889 Patent 16:41-54 (emphasis added).)

4. A coin value preservation and safeguard holder display of claim 1, wherein said holder is capable of displaying one or more labeling indicators that are located in proximity to a graded coin contained within said holder, said holder comprising a graded coin and an internal grading label, said grading label including a first plus (“+”) symbol grading indicator capable of displaying to the viewer that the graded coin has

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been graded using a fractional increment grading scale and found to have above-average eye appeal within the further displayed standard Sheldon scale whole number grade being displayed on the label, said above-average eye appeal condition being based on one or more characteristics of the graded coin, and said label further comprising a second colored symbol label indicator capable of displaying to a viewer that at least one electronic image file of the graded coin displayed within the holder has been previously recorded and said file is as a first file maintained in a standard computer digital file database that allows for future comparative assessment of the first file to a second digital file.

(‘889 Patent 16:55-17:6 (emphasis added).)

3. Prosecution History

During prosecution of the ‘889 Patent, Blake encountered numerous issues with prior art. In the back and forth with the United States Patent and Trademark Office (“USPTO”), the thrust of the invention disclosed in the specification—the AURA grading system for eye appeal—was eliminated from the patent claims. The USPTO then allowed the patent claims, identifying one element undisclosed by cited prior art. This history follows in further detail.

Blake filed a provisional patent application in July 2009. In February 2013, the USPTO issued a non-final rejection of then-pending independent Claim 8 (Claim 1 in the issued ‘889 Patent). (Office Action, Dkt. No. 28-3 at 148.) The claim originally contained a reference to the “AURA rating of a coin.” (Prelim. Amendment, Dkt. No. 28-4 at 57.) In the office action, the examiner stated that a prior art reference disclosed all elements of the claim except “displaying the AURA rating of the coins,” but it would have been obvious to a person having ordinary skill in the art “to include and/or substitute whatever grading system [was] readily available to the user.” (Office Action, Dkt. No. 28-3 at 148.)

Defendant amended independent Claim 8 to remove all references to the AURA rating and rewrote the claim with greater specificity, including the new language “providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale.” (Correction to Non-Compliant Amendment, Dkt. No. 28-3 at 93.) In the accompanying

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remarks, the Defendant stated that “the Applicant has merely clarified the meaning of AURA within the scope of Amended Claim 8.” (*Id.* at 97.)

The USPTO then issued a notice of allowance. (Notice of Allowance, Dkt. No. 28-3 at 74-83.) In the notice of allowance, the examiner stated that the reason for allowance was that “the cited prior art does not anticipate nor render obvious providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale.” (*Id.* at 81.)

4. Plaintiff’s Undisputed Evidence of Prior Art

Contrary to the USPTO’s decision, it is clear that prior art does anticipate and render obvious “providing an uncirculated coin, said coin I) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale.” (*Id.*) Concerning the other elements of the claims, the USPTO was correct that prior art disclosed them as well. The various elements of the claims are addressed in turn.

4.1 Claim 1(a)(i): Uncirculated Coin with Fractional Grade

As noted, the USPTO found that cited prior art did not anticipate or render obvious “providing an uncirculated coin . . . having been fractionally graded.” In support of its Motion, Plaintiff has provided ample evidence that prior art did anticipate and render obvious this element of the claim.

An “uncirculated coin” is merely an ordinary coin that shows no wear from circulation. (Garrett Decl., Dkt No. 58, ¶ 9.) Thus it is described by the patent as one that receives a grade between 60 and 70 in the Sheldon whole number scale, which is the top end of the scale. The following image displays a coin sold before Blake filed the patent application in July 2009.

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(Garrett Decl., Dkt. No. 58, ¶ 14.) In this image, the “MS68” is the coin’s grade on the standard Sheldon whole number scale. As Blake admitted, the star adjacent to that grade is “a designation that’s added to coins that collectors have that are considered to be visually very eye appealing.” (Meeks Decl., Dkt. No. 55, Ex. D, 10:9-20.) Thus the star rating serves to differentiate coins with the same Sheldon whole number.

Evidence shows that the practice of adding such distinguishing marks was established as early as the 1970s. For instance, the following coin was depicted in a 1976 book.



(Garrett Decl., Ex. 5 at 4.) This coin listing uses a “+” symbol to suggest that the coin is “somewhat better than the listed quantitative grade, but not good enough to qualify for the

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next highest one.” (*Id.* at 7.) Thus, displaying a mark to distinguish uncirculated coins within a single Sheldon whole number is hardly a novel concept.

Tellingly, Blake doesn’t dispute that “+” grading systems were employed in the 1970s to differentiate coins with the same Sheldon scale grade. Instead, Blake argues that the use of a “+” symbol is not “fractional grading” as the term is used in the patent claims. (Opp., Dkt. No. 72, at 8:1-11.) He argues that the “+” symbol is merely “a point within a fractional system,” or an “above-average indicator.” (*Id.*) But it is unclear where Blake sees a relevant distinction here. The Court does not find one. The patent does not disclose a particular fractional grading scale or the number of points on that scale.

Thus prior art either anticipated or rendered obvious “providing an uncirculated coin . . . having been fractionally graded.”

4.2 Claim 1(a)(ii): Digitally Imaged and Electronically Stored in a Database for Future Comparative Assessment

Prior art also anticipated Claim 1(a)(ii), disclosing “said coin having been further digitally imaged, whereby said digital coin image file is electronically stored in a database for future comparative assessment.” Plaintiff provided undisputed evidence that its coins have been imaged for over 30 years and digitally imaged since at least 2005. (Hall Decl., Dkt. No. 68, ¶5.) Moreover, Plaintiff has used these images to compare future images of the same coin. (*Id.*) Therefore, this element was anticipated by prior art.

4.3 Claim 1(b): Standard Clear Plastic Coin Holder Display Device Capable of Displaying a Coin Label in Proximity to Said Related Uncirculated Coin

Undisputed evidence demonstrates that the plastic coin holders described in Claim 1(b) have existed for decades. (Hall Decl., ¶ 4; Garrett Decl., ¶ 33.) Indeed the claim even describes the holders as “standard.” Therefore, prior art anticipated this element.

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4.4 Claim 1(c): A Coin Label That Is Internally Affixed in the Holder and Capable of Displaying an Eye-Appeal Indicator

Likewise, the same standard plastic coin holders have long been capable of displaying internally affixed labels and eye-appeal indicators. Indeed, the following examples pre-date the patent and include internal labels with fractional grade indicators:



(Garrett Decl., ¶ 33.) Therefore, Claim 1(c) was anticipated by prior art.

4.5 Claims 3 and 4: Color Indicator Showing that Coin Was Imaged

Lastly, evidence shows that prior art also either anticipated or rendered obvious the added element of Claims 3 and 4 concerning the use of a color indicator to show that the coin was imaged. Indeed, Plaintiff presented evidence that one major coin grader, NGC, includes a color hologram in all of its coin displays. In addition, NGC images each of its coins. Thus, the presence of NGC's color hologram signals that a coin has been imaged. Claims 3 and 4 add nothing novel to this prior art. Indeed, to the extent NGC's color hologram is not for the explicit purpose of signaling that the coin was imaged, such a use of a colored label would be obvious to one skilled in the art.

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CONCLUSION

The evidence is clear and convincing that prior art anticipated '889 Patent claims 1, 3, and 4. Each element of those claims was either already in practice or an obvious variation of existing practices. Indeed, Blake makes almost no effort to dispute Plaintiff's arguments on these points.

The one possibly novel aspect of Blake's invention is the "AURA," or "axial ultimate refractory angle," which is repeatedly mentioned in the specification, but not mentioned at all in the claims. Although difficult to say for certain given the elusive descriptions of the term, the AURA seems to be a way of capturing the coin's eye appeal by identifying the best viewing angles. But Blake failed to disclose and claim the precise methods of detecting or rating the AURA, so the Patent Claims cannot survive on that basis.

DISPOSITION

Plaintiff's Motion is GRANTED. Because Defendant's Motion depends on the validity of claims 1, 3, and 4, that Motion is DENIED.

Initials of
Preparer

_____ : _____
lmb